

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

MARK HOUGH, et al.,

Plaintiff,

vs.

WESTPORT & ASSOCIATES
INSURANCE SERVICES, and DOES 1-20,

Defendants.

Case No. C 05-02412 SI

**STIPULATION FOR REMAND; ORDER
(Local Rule 7-11 and 7-12)**

THE PARTIES TO THIS ACTION, BY AND THROUGH THEIR DESIGNATED
COUNSEL OF RECORD HEREIN, AGREE AND STIPULATE AS FOLLOWS:

1. That this matter shall be remanded to the Contra Costa Superior Court.
2. That the Motion to Remand Hearing date of August 19, 2005 shall be vacated.
3. That no party will seek attorneys' fees, costs or sanctions against the other in relation to the Notice of Removal or Motion to Remand.

The parties provide these background facts for the Court's consideration of their

1 Stipulation:

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3 This insurance coverage dispute arises out of an underlying construction defect action,
4 *Commercial Realty Group v. Christopher*, Solano County Superior Court, FCS19623, filed
5 May 2, 2002 (the “underlying action”).

6 On March 24, 2004, Clarendon America Insurance Company’s insured, Mark Hough
7 dba Advantage 21 Roofing commenced an action in Stanislaus Superior Court, Case No.
8 346284, *Mark Hough dba Advantage 21 Roofing v. Clarendon America Insurance Company*.
9 Mark Hough dba Advantage 21 Roofing alleged causes of action for breach of contract and
10 bad faith arising out of the underlying action. Clarendon America Insurance Company
11 removed the matter to the U.S. District Court for the Eastern District of California, Action
12 No. CIV F 04 56150 WW LJO. The action was dismissed on October 1, 2004 by Stipulated
13 Dismissal; Order.

14 On September 30, 2003, Mark Hough, individually and dba Advantage 21 Roofing, H&H
15 Enterprises, a general Partnership filed a Complaint in Contra Costa Superior Court for
16 Negligence; Negligent Misrepresentation; and Breach of Fiduciary Duty against their insurance
17 agent, *Mark Hough, individually and dba Advantage 21 Roofing, H&H Enterprises, a general*
18 *Partnership v. Westport & Associates Insurance Services and Does 1 through 20.*, Action No. C 01-
19 02454 (the “action against Westport”).

20 On April 16, 2005, pursuant to the court’s order granting an unopposed Motion for
21 Leave to Intervene, Intervenor Mark S. Cunningham and Commercial Realty Group filed a
22 complaint in intervention in the action against Westport, Contra Costa County Superior Court
23 Action No. C 01-02454. The Complaint-in-Intervention named Clarendon America Insurance
24 Company as a Defendant-in-Intervention. The Complaint-in-Intervention alleges breach of
25 contract and bad faith arising out of the underlying construction defect action by way of an
26 assignment from Hough. The Complaint-in-Intervention seeks to collect an assigned judgment
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1 of \$1,587,866 from Clarendon National Insurance Company, among other things.

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3 On June 15, 2005 Clarendon filed an answer to the Complaint-in-Intervention and
4 Notice of Removal in relation to the complaint-in-intervention.

5 On July 8, 2005 Intervenors Cunningham and Commercial Realty Group filed a Motion
6 for Remand. The Motion for Remand is scheduled for hearing on August 19, 2005. Opposition
7 to the Motion to Remand is due on July 29, 2005.

8 On July 12, 2005, Hough filed an Amended Complaint in the action against the broker,
9 *Mark Hough, individually and dba Advantage 21 Roofing, H&H Enterprises, a general Partnership v.*
10 *Clarendon America Ins. Co., Westport & Associates Insurance Services and Does 1 through 20.*, Action
11 No. C 01-02454. The Amended Complaint named Clarendon America Insurance Company as
12 a direct defendant. The Amended Complaint asserts Hough's personal unassigned claims
13 against Clarendon. The causes of action are for breach of contract and bad faith against
14 Clarendon.

15 Because Westport & Associates Insurance Company is a California corporation and
16 Hough is a California resident, there is no diversity in the main action.

17 Because of the change in pleadings following filing of the Notice of Removal and
18 Motion to Remand, the parties to the Complaint-in-Intervention agree that this matter should
19 be remanded to Contra Costa Superior Court.

20 The parties to this action, through their counsel, agree that the facts stated herein are
21 true and correct.

22 THE PARTIES TO THIS ACTION, BY AND THROUGH THEIR DESIGNATED
23 COUNSEL OF RECORD HEREIN, AGREE AND STIPULATE AS FOLLOWS:

- 24 1. That this matter shall be remanded to the Contra Costa Superior Court.
- 25 2. That the Motion to Remand Hearing date of August 19, 2005 shall be vacated.
- 26 3. That no party will seek attorneys' fees, costs or sanctions against the other in relation
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1 to the Notice of Removal or Motion to Remand.

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3 IT IS SO STIPULATED.

4 Dated: July 29, 2005

PILLSBURY & LEVINSON, LLP

5 By: 

6 Phillip L. Pillsbury, Jr.

7 Arnold R. Levinson

8 Richard D. Shively

9 Attorneys for Intervenor

10 MARK S. CUNNINGHAM and

11 COMMERCIAL REALTY GROUP

12 IT IS SO STIPULATED.

13 Dated: July 28, 2005

14 ROGER, SCOTT & HELMER LLP

15 By: 

16 Norman J. Roger

17 Patricia M. Fama

18 Attorneys for Defendant-in Intervention

19 Clarendon America Insurance Company

20 **ORDER**

21 PURSUANT TO STIPULATION, IT IS SO ORDERED.

22 DATED: _____

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24 UNITED STATES DISTRICT COURT JUDGE
25 NORTHERN DISTRICT OF CALIFORNIA

